

## **COVENANT NOT TO SUE**

This Covenant Not to Sue ("Covenant") is made by NIKE, Inc., an Oregon corporation having a principal place of business at One Bowerman Drive, Beaverton, Oregon 97005 ("NIKE"), and is effective as of March 19, 2010 ("Effective Date").

## **RECITALS**

WHEREAS, on July 16, 2009, NIKE commenced civil action number 09-CV-6366 against Already, LLC, a Texas limited liability company, with a principal place of business at 3501 State Highway 157, Suite 101, Euless, Texas 76040 ("Already"), in the United States District Court for the Southern District of New York (the "Complaint") asserting claims for (a) trademark infringement under Section 32(1) of the Lanham Act, (b) false designation of origin/unfair competition under Section 43(a) of the Lanham Act, (c) dilution under Section 43(c) of the Lanham Act, (d) trademark infringement and unfair competition under the common law, and (e) dilution under Section 360 of the New York General Business Law, all in relation to the NIKE Mark (defined below);

WHEREAS, NIKE represents and warrants that it owns federal and common law trademark rights in the design of NIKE's Air Force 1 low shoe, including United States Trademark Registration Number 3,451,905, registered June 24, 2008, collectively hereafter referred to as the "NIKE Mark.;"

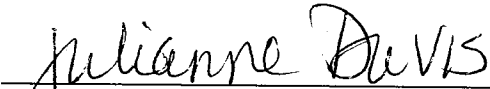
WHEREAS, NIKE has recently learned that Already's actions complained of in the Complaint no longer infringe or dilute the NIKE Mark at a level sufficient to warrant the substantial time and expense of continued litigation and NIKE wishes to conserve resources relating to its enforcement of the NIKE Mark; and

NOW, THEREFORE, NIKE covenants as follows:

## **COVENANT**

NIKE for and on behalf of itself, its parents, subsidiaries, divisions, related companies, affiliated companies, licensees, independent contract manufacturers, assigns, and/or other related business entities, as well as any of their predecessors, successors, directors, officers, employees, agents, distributors, attorneys, representatives, and employees of such entities, hereby unconditionally and irrevocably covenants to refrain from making any claim(s) or demand(s), or from commencing, causing, or permitting to be prosecuted any action in law or equity, against Already or any of its parents, subsidiaries, divisions, related companies, affiliated companies, licensees, independent contract manufacturers, assigns, and/or other related business entities, as well as any of their predecessors, successors, directors, officers, employees, agents, distributors, attorneys, representatives, and employees of such entities and all customers of each of the foregoing (whether direct or indirect), on account of any possible cause of action based on or involving trademark infringement, unfair competition, or dilution, under state or federal law in the United States relating to the NIKE Mark based on the appearance of any of Already's current and/or previous footwear product designs, and any colorable imitations thereof, regardless of

whether that footwear is produced, distributed, offered for sale, advertised, sold, or otherwise used in commerce before or after the Effective Date of this Covenant.

  
By: Julianne Davis, Esq.  
Title: Assistant General Counsel  
NIKE, Inc.